

LAW OFFICES OF  
**WALKUP, MELODIA, KELLY & SCHOENBERGER**  
A PROFESSIONAL CORPORATION

650 CALIFORNIA STREET, 26<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94108-2615  
T: (415) 981-7210 · F: (415) 391-6965

MICHAEL A. KELLY (State Bar #71460)  
[mkelly@walkuplawoffice.com](mailto:mkelly@walkuplawoffice.com)  
RICHARD H. SCHOENBERGER (State Bar #122190)  
[rschoenberger@walkuplawoffice.com](mailto:rschoenberger@walkuplawoffice.com)  
MATTHEW D. DAVIS (State Bar #141986)  
[mdavis@walkuplawoffice.com](mailto:mdavis@walkuplawoffice.com)  
ASHCON MINOIEFAR (State Bar #347583)  
[aminoiefar@walkuplawoffice.com](mailto:aminoiefar@walkuplawoffice.com)

SHANIN SPECTER (Pennsylvania State Bar No. 40928)  
(Admitted Pro Hac Vice)

[shanin.specter@klinespecter.com](mailto:shanin.specter@klinespecter.com)

ALEX VAN DYKE (CA State Bar No. 340379)  
[alex.vandyke@klinespecter.com](mailto:alex.vandyke@klinespecter.com)

**KLINE & SPECTER, P.C.**

**HENRY & SLOCUM**  
1525 Locust Street.

1525 Locust Street  
Philadelphia, PA 19102

Telephone: (215) 772-1000

Facsimile: (215) 772-1359

## **ATTORNEYS FOR ALL PLAINTIFFS**

UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO/OAKLAND  
DIVISION**

JANE ROE, an individual; MARY ROE, an individual; SUSAN ROE, an individual; JOHN ROE, an individual; BARBARA ROE, an individual; PHOENIX HOTEL SF, LLC, a California limited liability company; FUNKY FUN, LLC, a California limited liability company; and 2930 EL CAMINO, LLC, a California limited liability company.

## Plaintiffs

V.

**CITY AND COUNTY OF SAN  
FRANCISCO, a California public entity.**

## Defendants

Case No. 4:24-cv-01562-JST

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

## **TESTIMONY AND ORAL ARGUMENT REQUESTED**

Date: October 27, 2025

Date: 3/30/21  
Time: 8:30 am

**ASSIGNED FOR ALL PURPOSES  
TO THE HONORABLE DISTRICT  
JUDGE JON S. TIGAR,  
COURTROOM 6**

Action Filed: 03/14/2024

Action Filed: 03/14/2024  
Trial Date: Unassigned

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION - CASE NO. 4:24-cv-01562-JST

## I. INTRODUCTION

Plaintiffs seek a preliminary injunction enjoining Defendant City and County of San Francisco (“the City”) from directly or indirectly supplying fentanyl or methamphetamine-related drug paraphernalia to any individuals, groups, organizations, or entities within the Tenderloin neighborhood, and further enjoining the City from allowing City-funded contractors to furnish such paraphernalia to any individuals, groups, organizations, or entities in the Tenderloin.

8 City-funded contractors continue to hand out fentanyl pipes and related drug  
9 paraphernalia in the Tenderloin. The stills below are from a video taken just last  
10 week inside a storefront on Turk Street. The left image shows fentanyl pipes that  
11 were being handed out. The right image shows what happens as one steps outside.<sup>1</sup>



22 The City has sponsored and facilitated the distribution of paraphernalia in the  
23 Tenderloin. The City recently formalized this distribution with a policy promulgated  
24 to all organizations that furnish paraphernalia that are, or wish to be, in contract  
25 with the City. The City's affirmative conduct attracts hardcore fentanyl and  
26 methamphetamine drug addicts to the Tenderloin, where the City and its vendors

<sup>28</sup> <sup>1</sup> See accompanying declaration of Omar Ward, attached to the Declaration of Ashcon Minoiefar at ¶ 4 and **Ex. A**

1 then provide them with “harm reduction” services and “housing first” shelter options.

2       Foreseeably, drug addicts swarmed the Tenderloin in response to the City’s  
 3 offers of drug paraphernalia, drug consumption sites, and shelter spaces that impose  
 4 little to no rules with respect to behavior. Equally foreseeable, violent, gang-affiliated  
 5 drug dealers also converged on the neighborhood. As a result of the City’s recent  
 6 change to its policies with its contractors distributing drug paraphernalia, the City’s  
 7 has designated approved sites for its contractors to continue to furnish drug  
 8 paraphernalia to the addicts who now habituate the Tenderloin’s sidewalks, or  
 9 otherwise frequent the neighborhood.

10       Tenderloin residents and businesses, including Plaintiffs, have borne the brunt  
 11 of this influx of addicts and dealers. As set forth in Plaintiffs’ supporting  
 12 declarations, their use and enjoyment of their property has been significantly harmed  
 13 by addicts and dealers who block the public sidewalks and building entrances,  
 14 biohazardous waste, noise, smoke, dangerous activity, and offensive smells. Although  
 15 City employees acknowledge the existence of these nuisance conditions and admit  
 16 that drug use, especially the smoking of fentanyl, as contributing to those conditions,  
 17 the City facilitated City-funded vendors to handout fentanyl pipes in the Tenderloin.  
 18 Under these circumstances, the Court can and should grant Plaintiffs’ motion and  
 19 enjoin the City from directly, or indirectly through its contractors, distributing or  
 20 allowing the distribution of drug paraphernalia in the Tenderloin.

## 21                   **II. STATEMENT OF FACTS**

### 22                   **A. The Plaintiffs.**

23       There are five (5) individual plaintiffs and three (3) entity plaintiffs, all of  
 24 whom are moving parties herein. Each individual plaintiff resides in the Tenderloin  
 25 neighborhood, and each entity plaintiff operates a business there. In support of their  
 26 motion, they each submit declarations describing the conditions of the sidewalks  
 27 adjacent to their respective residences and businesses and also describing how those  
 28 conditions substantially interfere with the use and enjoyment of their property.

1           **B. The City Has Facilitated and Ratified the Distribution of Drug**  
 2           **Paraphernalia to Addicts in the Tenderloin.**

3           **1. Declaration of Omar Ward**

4           Omar Ward regularly visits the Tenderloin and publishes online content about  
 5 drug use in San Francisco. (Declaration of Omar Ward (“Ward Dec.”) at ¶ 2.) On  
 6 August 19, 2025, he was in an the alleyway near Duboce Park, where he saw people  
 7 who he understood to be with SF AIDS Foundation handing out paraphernalia at a  
 8 table. (*Id.* at ¶ 3.) Ward saw one person receive a bag with foil in it. (*Id.*) He also saw  
 9 an individual wearing a Department of Public Health (“DPH”) jacket sitting at a  
 10 table observing the “mobile distribution station.” (*Id.*)

11          On August 20, 2025, Ward entered 172 Turk Street and stood in line with  
 12 others. (*Id.* at ¶ 4.) An individual who he understood to be working for SF AIDS  
 13 passed out glass pipes and related paraphernalia to each person in the line, including  
 14 Ward. (*Id.*) No one offered counseling or provided counseling materials. (*Id.*) He took  
 15 a video of the interaction and conduct, including of two people who appeared to be  
 16 addicts under the influence just outside the door. (Ward Dec. at ¶ 4 and **Ex. A.**)

17          On August 21, 2025, Ward entered the parking lot of the Glide Memorial  
 18 Church at 322-330 Ellis Street and received a “smoking kit” from persons he  
 19 understood to be Glide employees. (*Id.* at ¶ 5.) The kit contained aluminum foil,  
 20 straws and Brillo. (*Ib.*) He did not receive a pipe because, he was told, “those are  
 21 handed out on Tuesday and Fridays.” (*Id.*) He took video of the interaction and  
 22 conduct. (Ward Dec. at ¶ 5 and **Ex. B.**)

23          Ward frequently sees people loitering outside 685 Ellis Street a City-owned  
 24 shelter, some of whom he knows to be residents, that are intoxicated and sitting or  
 25 lying on the sidewalk. (*Id.* at ¶ 6.)

26           **2. Testimony of Acting SFPD Captain Daniel Manning (Ret.)**

27          Daniel Manning, now retired, last served as Acting Captain of the SFPD’s  
 28 Tenderloin Station. (Deposition of Daniel Manning (“Manning Depo.”) at 8:7-15,

1 attached as **Ex. A** to Minoiefar Dec.) He regularly worked in the Tenderloin and  
 2 responded to complaints from residents and merchants about street conditions. (*Id.*  
 3 at 11:22-24.) The complaints included large groups of people blocking sidewalks, open  
 4 drug use and sales, and garbage. (*Id.* at 19:20-25.)

5 Manning was aware that City-funded vendors handed out fentanyl pipes and  
 6 he was told “that we [the SFPD] shouldn’t be citing people for things that are being  
 7 given to them by nonprofits.” (*Id.* at 22:18-21.) He felt that furnishing pipes to drug  
 8 addicts worsened the problems in the Tenderloin. (*Id.* at 22:18-23:01.) He stated, “I  
 9 remember hearing words like ‘safe injections’ and things like that. And smoking  
 10 something out of a pipe has nothing to do with safely injecting yourself with  
 11 narcotics.” (*Id.* at 23:6-9.)

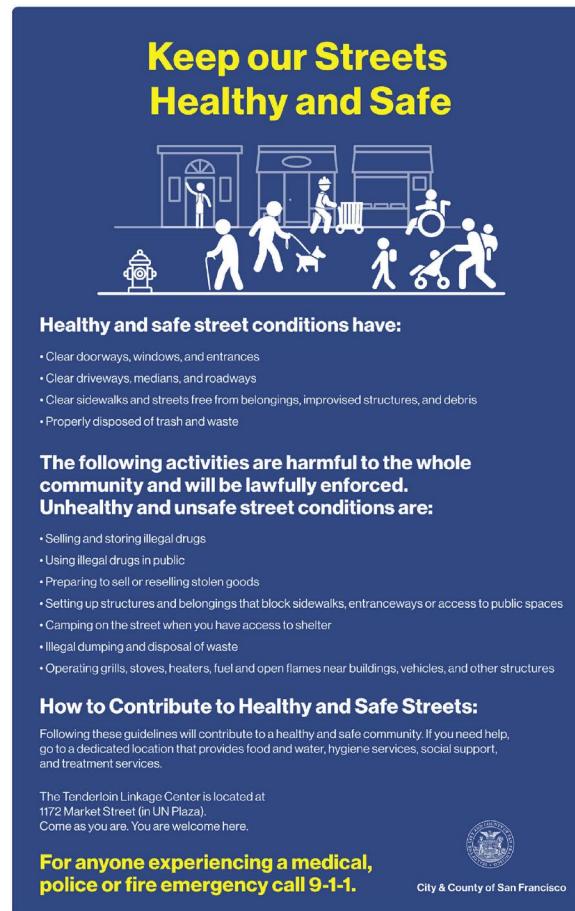
12 He understood the City-operated Tenderloin Linkage Center (“TLC”) to be “a  
 13 place where people were ingesting drugs in a safe environment.” (*Id.* at 32:2-9.) That  
 14 people were allowed to smoke fentanyl there was a “source of frustration” for him.  
 15 (*Id.* at 35:25-36:6.) He was told that his officers were not permitted to go into the  
 16 TLC. (*Id.* at 61:9-12.) The TLC “caused a lot of issues in UN Plaza for sure,” including  
 17 assaults, loitering, and “quality of life type crimes.” (*Id.* at 32:20-22.)

18 Manning is troubled by “the convenience” afforded to illicit drug users in the  
 19 Tenderloin. (*Id.* at 28:2-6.) It increases the problem of drug use in the neighborhood.  
 20 (*Id.* at 28:7-9.)

21           **3. Testimony City Department of Emergency Management,  
                  Tenderloin Street Operations Manager Mark Mazza.**

22 Mark Mazza works for the City’s Department of Emergency Management as  
 23 Tenderloin Street Operations Manager. (Deposition of Mark Mazza (“Mazza Depo.”)  
 24 attached as **Ex. B** to Minoiefar Dec., at 9:5-11.) He is also a licensed clinical social  
 25 worker. (*Id.* at 9:23-25.) He is intimately familiar with the Tenderloin, having lived  
 26 and worked there since 2006. (*Id.* At 13:23-14:05.) He spends the majority of his work  
 27 time on the Tenderloin’s streets. (*Id.* at 16:18-21.)  
 28

1 Mazza testified about a flyer, entitled “**Keep Our Streets Healthy and Safe**,”  
 2 that the City, ironically, distributed when it opened the TLC. (Mazza Depo. at 17:01-  
 3 14 and Ex. 1 thereto, which is attached as **Ex. C** to the Minoiefar Dec.) The flyer lists  
 4 “activities” that “are harmful to the whole community” and also identifies “unhealthy  
 5 and unsafe street conditions.”



1 Mazza affirmed that the “harmful” activities and conditions described in the  
 2 flyer all occur in the Tenderloin as a result of illicit drug activity. He witnesses the  
 3 selling and storing of illegal drugs and “rampant” illegal drug use. (*Id.* at 23:7-10; 25:2-  
 4 11.) He sees people who continue to camp on the Tenderloin’s streets even after being  
 5 offered shelter. (*Id.* at 27:11-17.) Many of them do so because of drug addiction. (*Id.* at  
 6 31:2-9.) He agreed that selling and storing illegal drugs contributes to unhealthy and  
 7 unsafe conditions in the Tenderloin (*Id.* at 20:10-24), as does “setting up structures  
 8 and belongings that block sidewalk, entrances or access to public spaces” (*Id.* at 21:22-  
 28

1 22:03) and operating grills, heaters, and open flames near buildings and vehicles. (*Id.*  
 2 at 22:14-21.)

3 Mazza has seen people handing out drug paraphernalia in the Tenderloin. (*Id.*  
 4 at 32:1-2.) He confirmed a growing and troubling trend: the distribution of smoking  
 5 materials by City-funded organizations, including Glide. (*Id.* at 35:13-20; 42:3-11.) He  
 6 testified that employees of the City's Department of Public Health ("DPH") are also  
 7 "involved" in the distribution of drug paraphernalia. (*Id.* at 36:8-21.) He identified  
 8 another employee, the DPH Community Affairs Manager, as being in a "leadership  
 9 role focused on harm reduction"<sup>2</sup> and as being the person at DPH who knew the most  
 10 about the distribution of drug paraphernalia in the Tenderloin. (*Id.* at 37:9-12, 55:7-  
 11 11.)

12 Mazza often finds discarded drug paraphernalia on the streets. (*Id.* at 35:6-9.)  
 13 He testified that in the past, the paraphernalia was primarily syringes. "More lately,  
 14 glass pipes, straws, aluminum foil." (*Id.* at 35:9-12.)

15 Mazza testified about the City's operation of the TLC. (*Id.* at 56:6-10.) He  
 16 observed people openly using narcotics in front of the staff who worked there. (*Id.* at  
 17 61:17-62:01.) He recalls the TLC being called a "safe consumption site." (*Id.* at 62:6-9.)  
 18 The TLC staff made no effort to stop the drug use there. (*Id.* at 62:17-21.)

19 Mazza has misgivings about handing out drug supplies in the Tenderloin. (*Id.*  
 20 at 39:15-17.) He feels it "maintains," "facilitates," and "condones" illegal drug use in  
 21 the there. (*Id.* at 41:13-42:01; 52:8-12.) He viewed video of a "Harm Reduction Day"  
 22 event held at Glide's parking lot. (*Id.* at 48:4-18.) He identified Grant Colfax, the  
 23 former head of the DPH, as an attendee seen in the video. (*Id.* at 49:5-10.) He also  
 24 identified the DPH Director of Strategic Initiatives as an attendee. (*Id.* at 49:8-10.) A  
 25 speaker at that event urged addicts to "Always go to the same dealer!" (*Id.* at 50:7-13.)  
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27 <sup>2</sup> "Harm reduction" is a term used by City employees and in City-sponsored programs  
 28 to describe activities that include the distribution of smoking pipes to people who are  
 addicted to fentanyl and/or methamphetamine.

1 Mazza testified that he is “confused by people who are in a professional capacity  
 2 encouraging drug dealing and drug use.” (*Id.* at 50:24-51:05.)

3           **4.       Testimony of DPH Community Affairs Manager.**

4           The current DPH Community Affairs Manager (“DPH Manager”)<sup>3</sup> was formerly  
 5 the director of DPH’s Overdose Prevention Program. (DPH Manager Depo., attached  
 6 as **Ex. D** to Minoiefar Dec. at 6:12-19 and 8:4-6.) She has worked for DPH for 27 years.  
 7 (*Id.* at 7:6-11.) She is the person that Mazza identified as most knowledgeable about  
 8 paraphernalia distribution in the Tenderloin. (Mazza Depo, *supra*, at 36:8-11.)

9           As the director of Overdose Prevention Program, she oversaw the contracts for  
 10 syringe distribution programs by Glide and SF AIDS. (*Id.* at 19:25-20:17.) She denied  
 11 knowing that “vendors who receive city funds distribute foil, smoking pipes and other  
 12 non-syringe drug paraphernalia in the Tenderloin.” (*Id.* at 21:8-22:2.) But she also  
 13 admitted that she was aware “from community meetings, from the news, [and] from  
 14 residents” that these vendors were handing out smoking supplies such as foil, straws,  
 15 and pipes on the Tenderloin’s sidewalks and streets. (*Id.* at 22:3-18.)

16           The DPH Manager initially denied any involvement in the operation of the TLC,  
 17 but then admitted that she was on many email communications about it. (*Id.* at 23:6-  
 18 15.) She claimed she could not recall the names of any DPH employees who worked at  
 19 the TLC. (*Id.* at 23:22-24:14.) She admitted that she saw employees of HealthRight  
 20 360, another City vendor, hand out drug paraphernalia from a table inside the TLC,  
 21 but repeatedly claimed, “I don’t know” when asked what was being distributed. (*Id.* at  
 22 25:1-18.) She admitted that people were allowed to use drugs at the TLC, but claimed  
 23 not to know whether DPH supervised that site. (*Id.* at 25:19-26:03.) She saw people  
 24 using drugs in an outdoor area that the City had fenced in, but said she had “no idea”  
 25 who supervised that site. (*Id.* at 26:4-27:12.) She said, “I don’t remember” when asked  
 26 if she saw people smoking or injecting drugs at the TLC. (*Id.* at 28:13-29:05.)

27  
 28           

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<sup>3</sup> Per agreement of the parties, the names of certain City employees are not being  
 referred to here for confidentiality reasons.

1       The DPH Manager acknowledged that street conditions in the Tenderloin,  
 2 including human waste and disposed drug paraphernalia, give rise to unhealthy and  
 3 unsafe conditions for the children who live there. (*Id.* at 18:10-17.) She also testified  
 4 that the Tenderloin has more children than just about any other neighborhood in the  
 5 city. (*Id.* at 14:11-15.) She acknowledged that DPH's mission is to serve all San  
 6 Franciscans. (*Id.* at 13:21-23.) Yet, she also testified that she was unaware of DPH  
 7 ever examining whether handing out drug supplies in the Tenderloin had any harmful  
 8 effects of children who live there. (*Id.* at 75:15-21.)

9                   **5. Testimony of Director of Behavioral Health Services and**  
**Mental Health SF.**

10          The current DPH Director of Behavioral Health Services and Mental Health  
 11 SF ("BH Director") has held that position since 2021. (BH Director Depo., attached as  
 12 **Ex. E** to Minoiefar Dec., at 10:4-6, 20:3-9.) When she gave her deposition on April  
 13 21, 2025, she was asked whether "Under the auspices of the City and County of San  
 14 Francisco, either directly or indirectly through contracted groups, have fentanyl  
 15 pipes been distributed in the Tenderloin" since she began her job. Rather than  
 16 answer, she invoked her Fifth Amendment right to remain silent. (*Id.* at 68:5-16.)

17          The BH Director testified that a new City policy, effective April 30, 2025,  
 18 would require that the furnishing of "safer smoking supplies," including foil, pipes,  
 19 and straws, only occur in non-public or DPH-approved spaces, including the Glide  
 20 parking lot. (*Id.* at 71:11-73:01.) She further testified that the City will not restrict  
 21 vendors from handing out pipes to anyone who asks for them. For example:

22                  Q. A 14 year old who comes into Glide in June 2025 and  
 23 wants drug paraphernalia, so long as he or she is  
 24 counseled, will receive it, true?

25                  A. I want to acknowledge the complexity here and say yes.

26                  (*Id.* at 121:14-19.)

27          The BH Director testified that the so-called use of "safe consumption" sites is a  
 28 "subset of harm reduction." (*Id.* at 24:6-8.) She asserted her Fifth Amendment right

1 when asked whether she had advocated for such sites in the City. (*Id.* at 24:9-15.)  
 2 She sometimes visited the TLC. (*Id.* at 28:11-22.) When asked whether drug use was  
 3 permitted there, whether it was intended to be a safe consumption site, and whether  
 4 she knew that people would use fentanyl and heroin at the TLC, she asserted her  
 5 right to remain silent. (*Id.* at 28:24-29:05, 55:1-23.) She likewise asserted the Fifth  
 6 Amendment when asked whether drug paraphernalia had been handed out at the  
 7 TLC. (*Id.* at 57:8-21.)<sup>4</sup>

8       The BH Director testified that under the new City policy, drug users will not  
 9 be allowed to use drugs within the controlled spaces where paraphernalia is  
 10 distributed. (*Id.* at 79:4-7.) She initially denied that a person receiving a fentanyl  
 11 pipe would be likely to use it outside of the approved distribution site, “People could  
 12 be living somewhere, for example.” (*Id.* at 79:8-16.) But, when pressed, she  
 13 acknowledged the obvious: people leaving the distribution sites are going to use the  
 14 drug and that can result in crime occurring around the parking lot at GLIDE. (*Id.*  
 15 79:18-80:18.)

16           **6. Testimony Director of Strategic Initiatives in  
 17 the Behavioral Health Section of DPH.**

18       The Director of Strategic Initiatives in the Behavioral Health Services section  
 19 of DPH (“Director of Strategic Initiatives”) was deposed. (Director of Strategic  
 20 Initiatives Depo., attached as **Ex. F** to Minoiefar Decl., at 11:4-13.) Her department  
 21 works with vendors, including Glide and SF AIDS, and oversees the contract for SF  
 22 AIDS. (*Id.* at 16:19-17:04; 18:22-25.)

23       When overseeing contracts for the distribution of “harm reduction” supplies,”  
 24 her department determines what supplies will be distributed by the contractor. (*Id.* at  
 25 20:22-21:01.) When asked whether up to April 2025 the DPH was involved in the  
 26 distribution of pipes or smoking materials in public spaces, she invoked her right to

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27           <sup>4</sup> Plaintiff Barbara Roe lives within a block of the TLC site and avers that its  
 28 operations devastated her neighborhood and that the problems persist. (Barbara Roe  
 Decl. at ¶¶2-7.)

1 remain silent. (*Id.* at 22:2-23:4.)

2       The Director of Strategic Initiatives testified that the City has the capability to  
 3 insert new provisions into contracts, as needed, with immediate effect. (*Id.* at 75:25-  
 4 76:14; 76:17-77:04.) Further, certain items are already strictly prohibited from  
 5 distribution by City contractors, for example tents. (*Id.* at 36:10-20.) Where a  
 6 contractor fails to comply with such prohibitions, the City will order the contractor to  
 7 “stop immediately” and enforce the provision through the contract if the conduct  
 8 continues. (*Id.* at 36:21-37:07.)

9       The Director of Strategic Initiatives acknowledged that the City received  
 10 complaints from the community about a City-funded pop-up paraphernalia  
 11 distribution site on Willow Street in the Tenderloin. (*Id.* at 47:12-48:08.) She also  
 12 acknowledged there was a “significant encampment and other drug use” at that  
 13 location. (*Id.* at 47:23-48:04.) Community members complained that the distribution of  
 14 supplies enabled drug use and attracted addicts to that area. (*Id.* at 48:22-49:01.) As a  
 15 result, it was moved. (*Id.* at 49:11-15.)

16       The Director of Strategic Initiatives testified that the City can “make  
 17 modifications to what supplies, or where supplies can be given out.” (*Id.* at 21:16-20.)  
 18 The City recently instituted a new policy, formally allowing vendors to distribute  
 19 smoking supplies so long as it occurs in nonpublic spaces. (*Id.* at 72:4-7.) She further  
 20 testified that specified distribution sites for smoking materials have been identified,  
 21 including the parking lot of Glide, and her office is overseeing the process of moving  
 22 outdoor mobile sites to “comply with” the City’s new policy. (*Id.* at 52:22-53:04.) There  
 23 was no effort to move the concentration of these distribution sites out of the Tenderloin.  
 24 (*Id.* at 53:5-9.)

25       She affirmed that in order to effectuate the new policy to permit the distribution  
 26 of smoking paraphernalia so long as it is in non-public spaces, DPH is instituting a  
 27 “policy rollout” that will include a “monitoring” program to ensure contractors comply  
 28 with the City’s policy to distribute smoking paraphernalia in nonpublic spaces. (*Id.* at

1 72:13-73:21.) She testified that a contract provision prohibiting the distribution of  
 2 smoking paraphernalia in public spaces “will immediately be added to the contracts.”  
 3 (*Id.* at 76:17-77:04.) She said these provisions will be enforced by the City, including  
 4 additional site visits and “formal corrective action process, which could then put their  
 5 funding and contract at risk.” (*Id.* at 74:11-75:23.)

6           **7.       Testimony of City Employee Emily Cohen.**

7           Emily Cohen works for the City’s Department of Homelessness and Supportive  
 8 Housing (“HSH”) in the Tenderloin. (Deposition of Emily Cohen (“Cohen Depo.”),  
 9 attached as **Ex. G** to Minoiefar Dec., at 7:20-25 and 16:14-15.) HSH enters into  
 10 agreements with vendors to run homeless facilities but “doesn’t have total control over  
 11 the agreements because the nonprofits that operate the sites have their own – like, are  
 12 their own entities.” (*Id.* at 33:16-22; 34:4-6.) She is unaware of any mandates imposed  
 13 by HSH regarding the use of drugs in the facilities. (*Id.* at 34:15-20.) She has received  
 14 many complaints about drug use in HSH-sponsored facilities spilling out into the  
 15 public areas around those facilities. (*Id.* at 35:6-12.)

16           Cohen has seen drug paraphernalia littering the streets of the Tenderloin. (*Id.*  
 17 at 53:6-8.) She is aware that some “harm reduction” organizations hand out  
 18 paraphernalia in the Tenderloin, including fentanyl and methamphetamine smoking  
 19 pipes. (*Id.* at 57:11-16; 57:21-58:07.) She testifies that HSH does not have any  
 20 “position” about whether furnishing such supplies is a good idea. (*Id.* at 58:25-59:03.)

21           **8.       Declaration of Randy Shaw.**

22           Randy Shaw is an authority on the current events and conditions in the  
 23 Tenderloin. (Declaration of Randy Shaw (“Shaw Dec.”) at ¶¶ 2, 3.) Shaw describes  
 24 how the City purchased a former youth hostel located at 685 Ellis Street in the  
 25 Tenderloin, ostensibly to provide permanent supportive housing for the homeless  
 26 population. (*Id.* at ¶ 4.) Instead, the City has been operating it as a homeless shelter  
 27 that is managed by a contractor. (*Ibid.*) In similar fashion, the City previously took  
 28 over three (3) former tourist hotels in the Tenderloin – the Adante Hotel, the

1 Monarch Hotel, and the COVA – and converted them into homeless shelters. (*Id.* at ¶  
 2 5.) The COVA was later closed due to significant pressure from the community, but  
 3 the Adante and Monarch continue to operate as homeless shelters. (*Id.* at ¶¶ 5 and  
 4 15.)

5 Shaw describes how during the daytime, many shelter residents at 685 Ellis  
 6 Street and the Monarch congregate outside those property and that the sidewalks  
 7 become blocked by drug users. (*Id.* at ¶ 6.) He has often witnessed illegal drug  
 8 activities among the people loitering in front of those shelters and has seen garbage  
 9 and discarded drug paraphernalia there. (*Id.*) Residents of 685 Ellis Street are free to  
 10 spend their days outside the shelter, and the operators have not effectively dispersed  
 11 sidewalk drug users. (*Id.* at ¶ 7.) The people loitering in front of 685 Ellis Street  
 12 include residents of that shelter. (*Id.*)

13 The Tenderloin Business Coalition asked the City to assign “ambassadors,” to  
 14 each of these former hotels-now shelters to prevent them from causing nuisance  
 15 conditions, but the City has failed to provide consistent monitoring. (*Id.* at ¶ 9.) Shaw  
 16 has supplied photographs of people using drugs in front of the 685 Ellis Street shelter  
 17 and the Monarch Hotel. (Shaw Dec. at ¶¶ 10 and 11, and **Ex. A** and **B**.)

18 Shaw provides a description of the longer-term effects of such nuisance  
 19 conditions have had in the Tenderloin. The Little Saigon neighborhood has been  
 20 economically devastated because the nuisance conditions from the nearby shelters  
 21 (former tourist hotels) have driven away foot traffic. (*Id.* at ¶¶ 12-14.)

22 **C. Plaintiffs Are Being Harmed by the Distribution of Drug**  
**Paraphernalia to Addicts in the Tenderloin.**

24 **1. Plaintiff Jane Roe**

25 Jane Roe is a married mother of two school-age daughters and has lived in the  
 26 Tenderloin for 18 years. (Declaration of Jane Roe at ¶ 2.) She often works 12-13 hour  
 27 days and returns home at night. (*Id.*) Her home is on the same block as the former  
 28 COVA Hotel and the current homeless shelter located at 685 Ellis Street. (*Id.* at ¶ 3.)

1 She sees intoxicated people on the sidewalks and frequently sees drug sales. (*Id.* at ¶  
 2 4.) She also finds a lot of discarded items, including pipes for smoking drugs. (*Id.*)  
 3 She has frequently found the entrance to her building blocked by people who are  
 4 lying down. (*Id.*) She frequently smells drugs being smoked near her home. (*Id.*) One  
 5 daughter has bad asthma. (*Id.*) She has been threatened with bodily harm when  
 6 asking loitering people to stop smoking near her home or cleaning up after them. (*Id.*  
 7 at ¶¶ 5-6.)

8 The conditions on her block are currently the same as when the COVA Hotel  
 9 was open; they persist around 685 Ellis Street. (*Id.* at ¶ 8, 12.) She sometimes has to  
 10 walk in the street because the sidewalk is blocked by people and other things, like  
 11 drug paraphernalia and feces. (*Id.* at ¶ 9.) She does not let her daughters walk alone  
 12 to the bus stop or play outside because of the dangerous conditions. (*Id.* at ¶ 10.)

13 **2. Plaintiff Mary Roe**

14 Mary Roe is a disabled senior citizen who lives in the Tenderloin. (Declaration  
 15 of Mary Roe at ¶¶ 2, 3.) Her disability requires that she use supplemental oxygen  
 16 and that she limit her physical exertion. (*Id.* at ¶ 3.) Her home is located close to  
 17 several facilities that provide services to the homeless and/or drug addicts. (*Id.* at ¶  
 18 2.)

19 A City-funded vendor, the Hospitality House, has a storefront on her block.  
 20 (*Id.*) In the past the staff would hand out drug paraphernalia from a table outside the  
 21 storefront. (*Id.* at ¶ 5.) More recently, paraphernalia is handed out inside the  
 22 Hospitality House's storefront through the doorway. She has witnessed individuals  
 23 take the paraphernalia, walk a short distance, and begin to smoke drugs, including  
 24 next to her building. (*Id.* at ¶¶ 5-6.)

25 She finds the blocked sidewalks to be especially problematic. (*Id.* at ¶ 7.) A  
 26 simple trip to the store is scary because “you don’t want to take your time walking  
 27 through the conditions described in this declaration.” (*Id.* at ¶ 3.) Adding extra steps  
 28 to walk around blocked sidewalks can cause her COPD to flare up. (*Id.* at ¶¶ 3, 8.) If

1 she stops to rest, she fears that she is making herself a target for criminal activity.  
 2 (*Id.* at ¶ 3.)

3       The conditions of the sidewalks have worsened recently, with more people  
 4 congregating there than before. (*Id.* at ¶ 7.) Despite reported changes by the City's  
 5 policies related to the furnishing of services and supplies to drug addicts, she has not  
 6 noticed any significant changes. (*Id.* at ¶ 8.) She is always on high alert for her safety  
 7 when she leaves her building and walks on the sidewalks. (*Id.* at ¶ 8-9)

8           **3. Plaintiff Susan Rose**

9       Plaintiff Susan Roe is a disabled senior citizen who lives in the Tenderloin and  
 10 needs to use a walker when she leaves her home. (Declaration of Susan Roe at ¶¶ 2,  
 11 3.) She finds the sidewalks blocked by loitering groups of people, who appear to be  
 12 homeless drug users, or their tents. (*Id.* at ¶¶ 4 and 5.) She frequently has to walk  
 13 into the street because the sidewalks are blocked. (*Id.* at ¶ 6.) She must be alert for  
 14 human excrement, erratic individuals, and discarded needles and pipes. (*Id.* at ¶ 5-7.)  
 15 She always checks outside her home in both directions before leaving. At times, she  
 16 decides not to leave her home due to the conditions outside and otherwise enjoy the  
 17 use of her property. (*Id.* at ¶ 7-8.)

18           **4. Plaintiff John Roe**

19       Plaintiff John Roe is a behavioral health clinician who lives in the Tenderloin.  
 20 (Declaration of John Roe at ¶ 2.) The sidewalks on his street are frequently blocked  
 21 by drug users. (*Id.* at ¶ 3.) He has on many occasions found unconscious people  
 22 blocking the entrance to his home. (*Id.* at ¶ 6.) One time, he encountered a man who  
 23 was defecating in the doorway of his home, and the man threatened him. (*Id.* at ¶ 5.)  
 24 On many occasions, he has smelled smoke from drugs. (*Id.*) He has to exercise  
 25 caution when exiting his home and using the sidewalks in order to avoid stepping  
 26 in/on hazardous items and substances. (*Id.* at ¶ 6.) These problems continue, despite  
 27 reports that the City has changed policies. (*Id.* at ¶ 7.)

1                   **5. Plaintiff Barbara Roe**

2                 Plaintiff Barbara Roe lives on the same block as the site of the former TLC.  
 3 (Declaration of Barbara Roe at ¶ 2.) Before the TLC closed, the sidewalks outside her  
 4 building were frequently crowded with people using or selling illegal drugs. (*Id.*)  
 5 Those activities have continued after the TLC closed. (*Id.*) Recently, crowds of  
 6 apparent addicts and drug dealers have been loitering outside the Proper Hotel  
 7 across the street from her building. (*Id.* at ¶ 3.) She occasionally sees people with  
 8 weapons. (*Id.*) She also sees people using drugs and acting extremely intoxicated.  
 9 (*Id.*) She frequently has to step into the street to avoid loitering people, debris, and  
 10 drug paraphernalia blocking the sidewalks. (*Ibid.*)

11                 A nearby Whole Foods store closed, which she understands was out of concern  
 12 for the safety of the employees. (*Id.* at ¶ 4.) Because of biohazardous material at the  
 13 entrance to her residence and on the sidewalk, she must take extra care for her  
 14 safety when entering and leaving her home. (*Id.* at ¶¶ 5, 7.) She carries a taser for  
 15 protection. (*Id.*) The entrance to her building has frequently been blocked by crowds  
 16 of seemingly intoxicated and dangerous individuals. (*Id.* at ¶ 6.) People have started  
 17 illegal fires outside the building, triggering the fire alarms. (*Id.*) Her HOA erected a  
 18 fence around her building in an effort to protect residents, but crowds of people still  
 19 continue to loiter there. (*Id.*)

20                   **6. Plaintiffs Phoenix Hotel and Funky Fun, LLC**

21                 Isabel Manchester has an ownership interest in and manages two business, a  
 22 hotel and a restaurant, which are both located at 601 Eddy Street, in the Tenderloin.  
 23 (Declaration of Isabel Manchester at ¶ 2.) Her businesses are close to a shelter  
 24 located at 685 Ellis Street and to a former shelter, the COVA Hotel. (*Id.* at ¶ 3.) She  
 25 and her partners have decided to close the businesses because it is “too difficult” to  
 26 operate in the Tenderloin under the current conditions there. (*Id.* at ¶ 4.) Those  
 27 conditions include sidewalks that are crowded by people who appear to be buying and  
 28 using drugs, and people who are under the influence of drugs. (*Id.* at ¶ 5.) She

1 regularly finds discarded drug paraphernalia and human excrement on the sidewalks  
 2 outside the hotel. (*Id.*) There are offensive smells caused by smoke and human waste.  
 3 (*Id.*) The conditions disrupt the operation of the hotel. (*Id.*) She has received  
 4 numerous complaints from guests about the conditions and has had numerous  
 5 canceled reservations. (*Id.* at ¶ 6.) Lower guest traffic has made it unprofitable to  
 6 operate a hotel or restaurant in the neighborhood. (*Id.*) Guests book out early  
 7 because of the conditions. (*Id.* at ¶ 7.) Her employees have been attacked by people  
 8 who are loitering and who appear to be under the influence of drugs. (*Id.*) This all  
 9 continues on the sidewalks in the Tenderloin despite reports of recent policy changes  
 10 by the City. (*Id.* at ¶ 8.)

#### 11           **7. Plaintiff 2930 El Camino, LLC**

12           Sam Patel is a member of 2490 El Camino, LLC, which operates the Best  
 13 Western Red Coach Inn, at 700 Eddy Street, in the Tenderloin. (Patel Declaration at  
 14 ¶ 2.) The hotel is located within two (2) blocks of 685 Ellis Street and the COVA  
 15 Hotel, where the City has operated homeless shelters. (*Id.* at ¶ 3.) The hotel is also  
 16 less than a block from a former paraphernalia distribution site on Willow Street and  
 17 a few blocks away from a current distribution site at the Glide parking lot. (*Id.*) The  
 18 sidewalks in front of the hotel are frequently occupied by people using narcotics. (*Id.*  
 19 at ¶ 4.) Intoxicated people sit and lie down on the sidewalks. (*Id.*) Some of the people  
 20 erect makeshift shelters on the sidewalks next to the hotel. (*Id.*) There are a lot of  
 21 hazardous items around the hotel, such as garbage, syringes, needles, pipes, and  
 22 aluminum foil. (*Id.*)

23           Hotel staff constantly try to clean up those materials to keep guests safe and to  
 24 maintain the hotel's reputation. (*Id.*) However, guests report the conditions in  
 25 reviews, and this appears to drive away potential business (*Id.*) There are loud noises  
 26 from arguments and offensive smells caused by smoke and human waste. (*Id.*) These  
 27 conditions disrupt the hotel's operations and the guests' use of the property. (*Id.*)  
 28 Patel has to be careful for his safety when entering or exiting the premises (*Id.* at ¶

1       5) The conditions occasionally improve, but they have been largely consistent and  
 2 have a substantial impact on operations and cost time and money to address. (*Id.*)

### 3                   **III.    LEGAL ARGUMENT**

4                  It is possible for a nuisance to be both public and, “from the perspective of  
 5 individuals who suffer an interference with their use and enjoyment of land, to be  
 6 private as well.” (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal. App. 4th 601,  
 7 610.) When a nuisance is both public and private the plaintiff must prove an injury  
 8 specifically referable to the use and enjoyment of his or her land. The injury,  
 9 however, need not be different in kind from that suffered by the general public.’”  
 10 (*People v. ConAgra Grocery Prod. Co.* (2017) 17 Cal. App. 5th 51, 122, quoting *Koll-*  
 11 *Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036,  
 12 1041.)

#### 13              **A.     The City’s Conduct Has Given Rise to a Private Nuisance in the 14 Tenderloin.**

15                  California Civ. Code § 3479 defines a nuisance as:

16                  “Anything which is injurious to health, including, but not  
 17 limited to, the illegal sale of controlled substances, or is  
 18 indecent or offensive to the senses, or an obstruction to the  
 19 free use of property, so as to interfere with the comfortable  
 enjoyment of life or property, or unlawfully obstructs the  
 free passage or use, in the customary manner, of any  
 navigable lake, or river, bay, stream, canal, or basin, or any  
 public park, square, street, or highway . . .”

20                  The elements of an action for private nuisance are: 1) an interference with the  
 21 plaintiff’s use and enjoyment of the plaintiff’s property; (2) that is substantial, and (3)  
 22 unreasonable. (*Today’s IV, Inc. v. Los Angeles County Metropolitan Transportation  
 23 Authority* (2022) 83 Cal. App. 5<sup>th</sup> 1137, 1176.)

#### 24              **1.     The City Has Interfered with Plaintiffs’ Use and 25 Enjoyment of Their Property.**

26                  The City has engaged in a well-documented pattern of affirmative conduct that  
 27 has attracted noxious and harmful activity to the Tenderloin. Plaintiffs have  
 28 provided evidence that the City’s policy of distributing smoking materials has caused

1 drug addicts and dealers to congregate around their residences and businesses.  
 2 Plaintiffs have described how the conduct of those drug users and sellers has  
 3 interfered with and obstructed their use of their property. The resulting crowding,  
 4 offensive smells, and fear of physical harm that interferes with plaintiffs' use,  
 5 enjoyment and egress from their property are cognizable nuisances. (*See Kempton v.*  
 6 *City of Los Angeles* (2008) 165 Cal.App.4<sup>th</sup> 1344, 1349 (impairment of access to and  
 7 from a home to abutting public streets through physical barriers and the fear of  
 8 physical harm stemming from navigating the obstructions constitutes both private  
 9 and public nuisances.) Thus, Plaintiffs have established the first element of their  
 10 private nuisance action.

11       The change in policy whereby fentanyl smoking kits are now handed out in  
 12 nonpublic spaces, like the Glide parking lot or the SF AIDS and Hospitality House's  
 13 storefront locations, does not diminish the nuisance. People who receive this  
 14 paraphernalia use drugs in nearby public spaces. This is clear from Ward's video of  
 15 the storefront outside 172 Turk Street, Mary Roe's eye witness testimony of  
 16 distribution resulting in consumption right outside her home, and BH Director's  
 17 reluctant admission people leaving the distribution sites are going to use the drug in  
 18 public areas.

19           **2. The Interference with Plaintiffs' Use and Enjoyment of  
 20 Their Property Has Been Substantial.**

21       Plaintiffs have established the second element of private nuisance, substantial  
 22 interference, by showing the great extent to which the furnishing of drug  
 23 paraphernalia in the Tenderloin has affected their free use of their property. There  
 24 are common themes in their stories about the dangers, annoyances, and indignities  
 25 they have faced: dealing with **blocked sidewalks and building entrances**, trying  
 26 to avoid physical contact with biohazardous waste in and around building entrances,  
 27 noise, smoke from open flames, and **aggressive and threatening behavior by  
 28 loitering drug addicts, which has scared them**. The individual Plaintiffs have

1 described the extraordinary measures they have to take to protect themselves from  
 2 these harms. The commercial plaintiffs have shown that these conditions have driven  
 3 away customers and have cost them revenue.

4                   **3. The Interference with Plaintiffs' Use and Enjoyment Is  
                       Unreasonable and Outweighs any Benefits.**

5  
 6                   The third element of private nuisance – that the defendant's conduct be  
 7 unreasonable – is also met here. As shown above, City employee Mark Mazza and  
 8 former SFPD Capt. Manning both expressed strong doubts that there was any  
 9 benefit in the furnishing of drug paraphernalia to drug addicts or in allowing the  
 10 open use of illicit drugs in the Tenderloin. The City also recognized the deleterious  
 11 effects of distributing smoking pipes in its new policy: it regulates how and where  
 12 they can be distributed. But as discussed above, this half measure does not reduce  
 13 the nuisance but rather contributes to it.

14                   The City's new policy continues the affirmative conduct of distributing drug  
 15 smoking pipes in the Tenderloin, which, in turn, feeds the nuisance conditions that  
 16 persist there. Individuals who the City knows to be drug addicts receive the smoking  
 17 materials at "DPH approved sites," then simply find a spot on a nearby sidewalk to  
 18 become intoxicated.

19                   Health & Safety Code § 11364 states that it is "unlawful to possess and opium  
 20 pipe or any device, contrivance, instrument of paraphernalia for unlawfully injecting  
 21 or smoking" a specified controlled substance. California Health and Safety Code  
 22 section 11364.7(a)(1) states as follows:

23                   "Except as authorized by law, a person who delivers,  
 24 furnishes, or transfers, possesses with intent to deliver,  
 25 furnish, or transfer . . . drug paraphernalia, knowing, or  
 26 under circumstances where one reasonably should know,  
 27 that it will be used to . . . ingest, inhale, or otherwise  
 introduce into the human body a controlled substance . . .  
 except as provided in subdivision (b), in violation of this  
 division, is guilty of a misdemeanor."

28                   In other words, the furnishing of fentanyl and methamphetamine smoking

1 paraphernalia is normally a criminal act with confirmed dilatory effects. Section  
 2 11364.7(a)(2) provides *limited* criminal immunity for public entities and their agents  
 3 who distribute items like “hypodermic needles or syringes,” that are “necessary to  
 4 prevent the spread of communicable diseases, or to prevent drug overdose, injury, or  
 5 disability” to participants in authorized “clean needle exchange programs.” The City  
 6 has never explained how the furnishing of a fentanyl or methamphetamine smoking  
 7 pipe is *necessary* to prevent the spread of communicable diseases, drug overdoses, or  
 8 injuries. (Both Mazza and Manning appeared to be highly skeptical of that notion.)

9       The Legislature included illegal drug sales in the very definition of “nuisance.”  
 10 (Civ. Code § 3479.) By criminalizing the possession and the furnishing of drug  
 11 paraphernalia (apart from limited exceptions), the Legislature has signaled that the  
 12 harm of such conduct greatly outweighs any benefits.

13           **B. The City’s Conduct Has Given Rise to a Public Nuisance in the  
 14 Tenderloin Because It Assisted in the Creation of a Nuisance.**

15       Civ. Code § 3480 defines a “public nuisance” as “one which affects at the same  
 16 time an entire community or neighborhood, or any considerable number of persons,  
 17 although the extent of the annoyance or damage inflicted upon individuals may be  
 18 unequal.” A public nuisance cause of action is established by proof that a defendant  
 19 “knowingly created or assisted in the creation of a substantial and unreasonable  
 20 interference with a public right.” (*ConAgra, supra*, 17 Cal.App.5<sup>th</sup> at 79.) Causation is  
 21 an element of a public nuisance action. (*Id.* at 101.)

22           **1. The City Caused a Nuisance by Its Affirmative Conduct.**

23       In *City & Cnty. of San Francisco v. Purdue Pharma L.P.* (N.D. Cal. 2022) 620  
 24 F. Supp. 3d 936, 946, the Court found that conduct, for purposes of public nuisance,  
 25 encompasses “any action” that assists in creating a system that causes an  
 26 interference with a public right.” (*Id.* at 999.) The *ConAgra* court held that a  
 27 substantial factor standard applied, noting that:

28           “‘The substantial factor standard is a relatively broad one,  
                  requiring only that the contribution of the individual cause

1           be more than negligible or theoretical.’ . . . Thus, ‘a force  
 2           which plays only an “infinitesimal” or “theoretical” part in  
 3           bringing about injury, damage, or loss is not a substantial  
 4           factor’ . . . , but a very minor force that does cause harm is a  
 5           substantial factor. (*Id.* at 101-02.)

6           The City’s conduct, in furnishing the pipes that are used by, and later  
 7           discarded on the streets of the Tenderloin, by homeless drug addicts, meets the low  
 8           threshold of the substantial factor test. Specifically, the City *implemented a policy*, in  
 9           that directs “the furnishing of safer smoking supplies,” including foil, pipes, and  
 10          straws to be distributed *in locations it approves*. (BH Director Depo. at 71:11-73:01.)  
 11          The City is also *monitoring compliance* with the policy. (Director of Strategic  
 12          Initiatives Depo. at 72:4-15.)

13           **2. The City Has Had Actual Knowledge of the Harms Caused  
 14           by Distributing Paraphernalia to Drug Addicts.**

15           Plaintiffs have submitted testimony of City employees who admit they were  
 16          aware of complaints from the Tenderloin community about the various nuisance  
 17          conditions arising from the City’s “harm reduction” activities. As discussed above, the  
 18          City published a flyer, “Keep Our Streets Healthy and Safe,” to be distributed at  
 19          “harm reduction” locations. In that flyer, the City demonstrated its awareness of the  
 20          “unhealthy,” “unsafe,” and “harmful” conditions that were likely to arise. Also, the  
 21          record shows that on prior occasions, the City closed facilities (such as the TLC and  
 22          the COVA Hotel) after similar nuisance conditions arose there.

23           The City knows that the paraphernalia handed to drug addicts, eventually  
 24          ends up on public streets and sidewalks, *regardless of whether furnished outside or  
 25           inside*. This is evident from the numerous complaints by residents, traditional and  
 26          social media news reports, and observations by its own employees.

27           **3. The City’s Conduct Was Unreasonable**

28           In *Purdue Pharma*, the Court wrote that conduct “is unreasonable” if it either  
 29          violates a statute, ordinance or administrative regulation (620 F.Supp.3d at 999) or,  
 30          alternatively, if “the gravity of the harm outweighs the social utility of the

1 defendant's conduct." (*Ibid.*) It remains untested whether the City's conduct violated  
 2 criminal statutes. But the harm shown by Plaintiffs in this action clearly outweighs  
 3 any social utility.

4           **C. The Court Has Authority to Issue an Injunction Under These  
 5 Facts and Should Do So to Prevent Further Harm to Plaintiffs.**

6           Pursuant to Federal Rule of Civil Procedure 65(a), a court can issue a  
 7 preliminary injunction following notice to the adverse party. A plaintiff seeking a  
 8 preliminary injunction must establish (1) that it is likely to succeed on the merits, (2)  
 9 that it is likely to suffer irreparable harm absent preliminary relief, (3) that the  
 10 balance of the equities tips in its favor, and (4) that an injunction is in the public  
 11 interest. (*Matsumoto v. Labrador* (9th Cir., 2024) 122 F.4th 787, 804.) Although a  
 12 plaintiff must meet all four elements, the court may apply a balancing test to them,  
 13 so long as a certain threshold showing is made on each factor." (*Leiva-Perez v. Holder*  
 14 (9th Cir. 2011) 640 F. 3d 962, 966.)

15           **1. Plaintiffs' Action Is Likely to Succeed on the Merits.**

16           Although the underlying conduct in this case differs from the conduct that was  
 17 found to be a nuisance in the *Purdue Pharma* case, the harms complained of as  
 18 private and public nuisances are the same. Whether the City's conduct was a  
 19 contributing cause of those harms is analyzed under the "relatively broad"  
 20 substantial factor test, "requiring only that the contribution of the individual cause  
 21 be more than negligible or theoretical." (*ConAgra, supra*, 17 Cal.App.5<sup>th</sup>, at 101-02.)  
 22 The elements of public and private nuisance have been met. Thus, this factor weighs  
 23 strongly in favor of an injunction.

24           **2. Plaintiffs Are Likely to Suffer Irreparable Harm Absent  
 25 Preliminary Relief.**

26           Plaintiffs have thus far managed to avoid significant physical injuries by  
 27 exercising extraordinary personal vigilance while entering and exiting their homes  
 28 and businesses and while trying to use the sidewalks in the Tenderloin. They are

1 constantly subjected to threatening words and conduct and unreasonable risks of  
 2 harm when leaving their buildings or using public sidewalks. They are forced to  
 3 inhale toxic fumes and smell highly offensive odors inside or right outside their  
 4 property, and they must dodge biohazardous materials. These constant intrusions  
 5 into their daily lives constitute irreparable harm.

6       These threats of harm are immediate and cause Plaintiffs to alter their daily  
 7 routines in order to circumvent the dangers they face. Plaintiffs have shown the  
 8 many obstacles and dangerous situations they confront each day as a result of  
 9 blocked building entrances and sidewalks. There is no adequate legal remedy to be  
 10 obtained from homeless drug addicts for the intrusions described above. Thus, this  
 11 factor weighs strongly in favor of an injunction

12                   **3. The Balance of the Equities Favors Plaintiffs.**

13       As discussed above in relation to the nuisance claims, there appears to be little  
 14 to no utility related to the specific conduct complained of in this lawsuit: the City's  
 15 furnishing of fentanyl and methamphetamine pipes to drug addicts, in the  
 16 Tenderloin. This is true regardless of the time, place or manner in which those pipes  
 17 are distributed.

18       The City's new policy has had no material improvement on the nuisance  
 19 conditions in the Tenderloin, as documented throughout the supporting declarations.  
 20 Rather, it formalizes and facilitates the conduct near Plaintiffs' homes and  
 21 businesses. As described above, Omar Ward personally witnessed drug-smoking  
 22 paraphernalia being distributed by two City contractors: SF AIDS and Glide, on  
 23 three recent occasions in August 2025. Mary Roe previously saw Hospitality House  
 24 openly distribute drug-smoking paraphernalia "on a table out front." Now, people  
 25 knock on the door of Hospitality House, receive items from someone inside, walk a  
 26 short distance, and then smoke the drugs, including right in front of her house. She  
 27 infers and believes that they are receiving paraphernalia from Hospitality House.  
 28 Jane Roe lives right next to 685 Ellis and right in between the shelter and the

1 distribution site at GLIDE. It is reasonable to infer the conditions they faces on a  
 2 daily basis are the result of individuals retrieving pipes from GLIDE and using them  
 3 in front of her property with the resulting nuisance effects.

4       Also, no evidence that enforcing a contract provision to require contractors not  
 5 to furnish drug pipes would cost the City any substantial expense. The Director of  
 6 Strategic Initiatives testified that, the City has the capability to insert new  
 7 provisions into contracts, as needed, with immediate effect. (Director of Strategic  
 8 Initiatives Depo. at 76:23-77:1.) The City's roll out of its new paraphernalia policy  
 9 shows that Plaintiffs' requested injunction could be feasibly crafted by the court and  
 10 enforced at reasonable cost to the City. Thus, the balance of the equities weighs  
 11 heavily in favor of an injunction.

12           **4. An Injunction to Prevent Distribution of Drug Pipes in the  
 13           Tenderloin Is in the Public Interest.**

14       An order enjoining the furnishing of drug smoking pipes in the Tenderloin will  
 15 further the Legislature's express effort to ban them. It will prevent the City from  
 16 continuing to facilitate and condone illegal drug use, and it will remove the harms  
 17 contributed to by the City and complained of by the various Plaintiffs in this action.

18           **D. The City Is Not Immune from Injunctive Relief Under Civ. Code  
 19           § 3482 Because the Statute Under Which It Has Acted Does Not  
 20           Expressly Sanction Its Conduct.**

21       Plaintiffs anticipate that the City will argue that it is immune from nuisance  
 22 liability under Civ. Code § 3482 and Health & Safety Code § 121349.1 and that, as a  
 23 result, its conduct cannot be enjoined. Section 3482 states that “[n]othing which is  
 24 done or maintained under the express authority of a statute can be deemed a  
 25 nuisance.”

26       The problem with that argument is twofold. First, section 3482 is construed  
 27 “narrowly.” (*City of Norwalk v. City of Cerritos* (2024) 99 Cal. App. 5th 977, 986.)  
 28 Second, section 131349.1, on its face, only provides immunity from “criminal  
 prosecution,” and only for furnishing specific items like hypodermic needles and

1 syringes, "which are necessary to prevent the spread of communicable diseases." (*Id.*)  
 2 In this case, Plaintiffs are alleging that the nuisance conditions complained of arise  
 3 from the furnishing of pipes used for smoking fentanyl and methamphetamine. Thus,  
 4 the City's conduct falls outside of the narrow scope of the immunity.

5 While there is a statutory exception for syringes and needles (which have  
 6 uniquely powerful capacity to spread blood-borne pathogens), there is no such carve-  
 7 out for pipes and other items that are used to smoke fentanyl or methamphetamine.

#### 8 IV. CONCLUSION

9 Plaintiffs have found themselves at Ground Zero of a nuisance that has  
 10 impacted the entire Tenderloin neighborhood. It is unclear what, if any, benefit  
 11 accrues from the distribution of smoking paraphernalia. The harms are manifest.  
 12 Thus, the Court should issue a preliminary injunction enjoining the City from  
 13 directly or indirectly supplying or fentanyl or methamphetamine-smoking drug  
 14 paraphernalia to any individuals, groups, organizations, or entities within the  
 15 Tenderloin neighborhood, and further enjoining the City from allowing City  
 16 contractors to furnish such paraphernalia to any individuals, groups, organizations,  
 17 or entities within the Tenderloin.

18 Dated: August 25, 2025

WALKUP, MELODIA, KELLY & SCHOENBERGER

19  
20 Bv:



21 MICHAEL A. KELLY  
 22 RICHARD H. SCHOENBERGER  
 23 MATTHEW D. DAVIS  
 24 ASHCON MINOIEFAR  
 25 Attorneys for ALL PLAINTIFFS

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